

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

JOINT APPLICATION PURSUANT 1994 HOUSE )  
BILL NO. 501 FOR APPROVAL OF KENTUCKY )  
POWER COMPANY COLLABORATIVE DEMAND- )  
SIDE MANAGEMENT PROGRAMS AND FOR )  
AUTHORITY TO IMPLEMENT A TARIFF TO ) CASE NO. 2008-00349  
RECOVER COSTS, NET LOST REVENUES AND )  
RECEIVE INCENTIVES ASSOCIATED WITH )  
IMPLEMENTATION OF THREE NEW RESIDENTIAL )  
DEMAND-SIDE MANAGEMENT PROGRAMS )  
BEGINNING JANUARY 1, 2009 )

Response of Kentucky Power Company To  
Mr. Young's "Application For Rehearing"

Kentucky Power Company states for its Response to Mr. Young's Application for Rehearing:

Mr. Young's Application for Rehearing is founded upon his fundamental misapprehension concerning the nature of the Commission's jurisdiction, as well as the Commission's discretion to manage its docket and limit intervention in matters pending before it. Even if Mr. Young's arguments had merit, and they do not for the reasons the Commission identified in its December 4, 2008 Order, he has not demonstrated that the Commission abused that discretion.

Mr. Young first argues the Commission's jurisdiction is not limited to the rates and service of the entities regulated by the Commission.<sup>1</sup> As the Commission's December 4, 2008

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<sup>1</sup> Application for Rehearing, *In the Matter of: Joint Application Pursuant to 1994 House Bill No. 501 for Approval of Kentucky Power Company Collaborative Demand-Side Management Programs And For Authority To Implement A Tariff To Recover Costs, Net Lost Revenues And Receive Incentives Associated With The Implementation Of Three New Residential Demand-Side Management Programs Beginning January 1, 2009*, Case No. 2008-00349 at 2-3 (December 22, 2008) ("Application.")

Order makes clear, Kentucky's highest Court<sup>2</sup> has held to the contrary and the Commission is bound by the Court's determination. To the extent Mr. Young disagrees, his dispute, and remedy, if any, lies with the Kentucky Supreme Court or the General Assembly and not the Commission.

Mr. Young next argues that even if the Commission's jurisdiction is limited by KRS 278.040(2), that statute does not limit his ability to intervene.<sup>3</sup> But if the Commission lacks jurisdiction to consider the issues Mr. Young seeks to raise, it likewise lacks the ability to grant Mr. Young any relief with respect to the issues, including the ability to permit Mr. Young to intervene to raise issues outside the Commission's jurisdiction.<sup>4</sup> Moreover, even if the Commission's regulation were as expansive as Mr. Young insists, and it is not, the jurisdictional statute, not the regulation, would control.<sup>5</sup>

Mr. Young's final argument is that he possesses a "special interest" in this proceeding that is not otherwise adequately represented and thus he is entitled to intervene under 807 KAR 5:001, Section 3(8).<sup>6</sup> But the Commission has concluded to the contrary and Mr. Young fails to demonstrate how the Commission abused its discretion<sup>7</sup> in concluding he lacks the requisite special interest. Indeed, it would have been an abuse of discretion for the Commission to allow

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<sup>2</sup> Order, *In the Matter of: Joint Application Pursuant to 1994 House Bill No. 501 for Approval of Kentucky Power Company Collaborative Demand-Side Management Programs And For Authority To Implement A Tariff To Recover Costs, Net Lost Revenues And Receive Incentives Associated With The Implementation Of Three New Residential Demand-Side Management Programs Beginning January 1, 2009*, Case No. 2008-00349 at 2-3 (December 4, 2008).

<sup>3</sup> Application at 3-4.

<sup>4</sup> *Boone County Sewer & Water District v. Public Service Commission*, 949 S.W.2d 588, 591 (Ky. 1997) ("The powers of the PSC are purely statutory and it has only such powers as are conferred expressly or by necessity or fair implication. . . . As a statutory agency of limited authority, the PSC cannot add to its enumerated powers.") (citations omitted).

<sup>5</sup> *Camera Center, Inc. v. Revenue Cabinet*, 34 S.W.3d 39, 41 (Ky. 2000) ("the agency can not by its rules and regulations, amend, alter, enlarge or limit the terms of legislative enactment."); *Union Light, Heat and Power Company v. Public Service Commission*, 271 S.W.2d 361, 365 (Ky. 1954) (holding invalid regulation amending statute.)

<sup>6</sup> Application at 4.

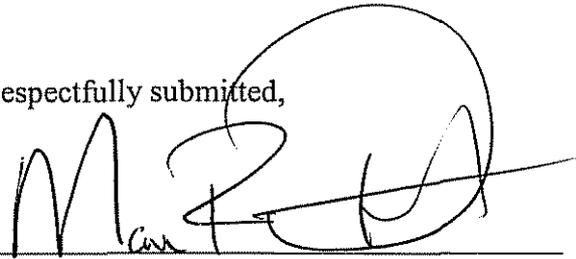
<sup>7</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission*, 407 S.W.2d 127, 130 (Ky. 1966) (the decision to grant intervention lies within the Commission's sound discretion.)

Mr. Young to intervene to raise matters that are not only irrelevant to the issues before the Commission, but that are beyond the Commission's power to decide.<sup>8</sup>

At bottom, this dispute is an effort by someone, however well-intentioned he claims to be, who pays no rates to, nor receives any service from, Kentucky Power, to force Kentucky Power to litigate before the Commission matters the Kentucky Supreme Court has indicated the Commission has no authority to decide. The Commission exercised its broad discretion to deny Mr. Young the ability to participate as a party in this case. In so doing, the Commission reasonably acted to husband its limited resources and to protect Kentucky Power's ratepayers from bearing the unnecessary costs inherent in addressing Mr. Young's irrelevant efforts.

The Commission should deny Mr. Young's Application for Rehearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet  
STITES & HARBISON PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
Telephone: (502) 223-3477

COUNSEL FOR KENTUCKY POWER

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<sup>8</sup> In fact, Commission found that to allow Mr. Young to intervene "would unduly complicate and disrupt this proceeding." Order at 4.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 31<sup>st</sup> day of December, 2008 upon:

Geoffrey M. Young  
454 Kimberly Place  
Lexington, Kentucky 40503



Mark R. Overstreet